

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



153

**FROM:** Transportation and Land Management Agency

**SUBMITTAL DATE:**  
February 5, 2004

**SUBJECT:** Vail Lake Memorandum of Understanding

**RECOMMENDED MOTION:** The Board of Supervisors approve the attached Memorandum of Understanding ("MOU") setting forth the principal terms and conditions of a settlement agreement and authorize the Chairman to execute the same on behalf of the County.

**BACKGROUND:** On July 16, 2003, Vail Lake USA, LLC, a California limited liability company, Vail Lake Village & Resort, LLC, a California limited liability company, and Vail Lake-Rancho California, LLC, a California limited liability company (collectively, "Vail Lake") filed a Petition for Writ of Mandate and Complaint for Preliminary and Permanent Injunction and for Damages in Riverside County Superior Court (Case No. INC R396483) against the County of Riverside, the Riverside County Board of Supervisors, and Riverside County Assessor Gary Orso challenging the MSHCP, the Final EIR/EIS, and related approvals ("Litigation"). Since the Litigation was filed, County staff has engaged in extensive settlement discussions with Vail Lake representatives. This MOU, attached as Exhibit "A", identifies the assurances and commitments made by Vail Lake and establishes the framework for the development of a formal settlement agreement that will incorporate the terms of the MOU and dismiss the Litigation.

Departmental Concurrence

Attachment

  
\_\_\_\_\_  
Richard Lashbrook  
Transportation and Land Management Agency Director

<b>FINANCIAL DATA</b>	Current F.Y. Total Cost:	\$	In Current Year Budget:
	Current F.Y. Net County Cost:	\$	Budget Adjustment:
	Annual Net County Cost:	\$	For Fiscal Year:

<b>SOURCE OF FUNDS:</b>	<b>Positions To Be Deleted Per A-30</b>	<input type="checkbox"/>
	<b>Requires 4/5 Vote</b>	<input type="checkbox"/>

**C.E.O. RECOMMENDATION:**  
  
**APPROVE**

**County Executive Office Signature**  
  


Dept't Recomm.:  Consent  Policy   
 Per Exec. Ofc.:  Consent  Policy

COUNTY OF RIVERSIDE  
 FEB -2 11:13  
 OFFICE EXECUTIVE  
 RECEIVED BY JENNIFER BUFORD  
 COUNTY OF RIVERSIDE

**Prev. Agn. Ref.:** | **District:** All | **Agenda Number:** 15.2

## **EXHIBIT "A"**

**MEMORANDUM OF UNDERSTANDING BETWEEN**  
**THE COUNTY OF RIVERSIDE, RIVERSIDE COUNTY BOARD OF SUPERVISORS**  
**AND GARY ORSO IN HIS CAPACITY AS RIVERSIDE COUNTY ASSESSOR**  
**AND**  
**VAIL LAKE USA, LLC, VAIL LAKE VILLAGE & RESORT, LLC AND VAIL LAKE-**  
**RANCHO CALIFORNIA, LLC WITH RESPECT TO RIVERSIDE COUNTY**  
**SUPERIOR COURT CASE NUMBER 396483.**

This Memorandum of Understanding ("MOU") is made as of \_\_\_\_\_, 2004 by and among the County of Riverside, Riverside County Board of Supervisors and Gary Orso in his capacity as Riverside County Assessor (collectively, the "County") and Vail Lake USA, LLC, a California limited liability company, Vail Lake Village & Resort, LLC, a California limited liability company, and Vail Lake-Rancho California, LLC, a California limited liability company (collectively, "Petitioners"), to set forth the principal terms and conditions of an agreement in principle among the Parties hereto to settle and resolve with finality all present and future claims relating to the Western Riverside County Multiple Species Habitat Conservation Plan ("MSHCP") which have been or could have been asserted by any of the Parties hereto, including all claims against the County of Riverside and all of its governmental agencies, departments, political subdivisions and any other County-controlled public entities. The Parties contemplate the prompt drafting and execution of a comprehensive settlement agreement that will incorporate the terms of this MOU, as well as other customary terms and conditions, including releases, acceptable to the Parties ("Settlement Agreement").

### **RECITALS**

**WHEREAS**, the County is currently undertaking a comprehensive land use, transportation, and habitat conservation planning effort, commonly referred to as the Riverside County Integrated Project ("RCIP"); and

**WHEREAS**, a primary objective of RCIP is to facilitate orderly economic development throughout Western Riverside County by setting aside land for habitat conservation through the implementation of the MSHCP; and

**WHEREAS**, the County is the lead agency for the MSHCP pursuant to the California Environmental Quality Act ("CEQA") (Pub. Res. Code, § 21000 et seq.) and the State CEQA Guidelines (14 CCR § 15000 et seq.); and

**WHEREAS**, the County determined that a joint Environmental Impact Report/ Environmental Impact Statement ("EIR/EIS") should be prepared pursuant to the California Environmental Quality Act ("CEQA") and the National Environmental Policy Act in order to analyze all potentially adverse environmental impacts of the MSHCP; and

**WHEREAS**, the Board of Supervisors of the County of Riverside, at its regularly scheduled public meeting on June 17, 2003 reviewed and considered the Initial Study, Draft EIR/EIS, Final EIR/EIS and other related documents in the record before it and by Resolution No. 2003-299, approved the MSHCP, certified the Final EIR/EIS and adopted environmental findings and a Statement of Overriding Considerations; and

**WHEREAS**, on July 16, 2003 Petitioners filed a Petition for Writ of Mandate and Complaint for Preliminary and Permanent Injunction and for Damages ("Petition") in Riverside County Superior Court against the County of Riverside, the Riverside County Board of Supervisors and Riverside County Assessor Gary Orso challenging the MSHCP, the Final EIR/EIS and related approvals ("Litigation"); and

**WHEREAS**, Petitioners own, or have a controlling interest in, property totaling approximately seven thousand (7,000) acres in Western Riverside County as generally depicted on Exhibit A ("Property"); and

**WHEREAS**, the County and Petitioners have begun settlement discussions to attempt to settle the Litigation; and

**WHEREAS**, as a result of these settlement discussions, the County and Petitioners desire to enter into this MOU to establish a general framework for a future formal comprehensive Settlement Agreement.

**NOW, THEREFORE**, the Parties do hereby set forth their mutual representations, commitments, and understandings regarding the following:

1. Recitals. The Parties agree that the above stated recitals are true and correct.
2. Terms. The County and Petitioners shall negotiate in good faith to establish a formal comprehensive Settlement Agreement that shall include, among other things, the following terms:
  - 2.1 General Plan Amendment. County shall initiate and process a General Plan amendment for the Property ("Amendment"), which proposes changes in substantially the same form as shown on Exhibit B. The County shall begin processing the Amendment within ninety (90) days of execution of the Settlement Agreement and shall expedite processing of the Amendment to the extent allowed by state law and Riverside County ordinances, rules and regulations. The Amendment shall not be subject to the five year certainty principle conditioned upon: 1) the dedication of a conservation easement and/or dedication in fee of the conservation land defined in Section 2.4 of this Agreement; and 2) the County making MSHCP consistency findings.

- 2.2 Development. The County shall process a development application submitted by the Petitioners for resort related development, public facility recreation and educational uses and conservation related uses (“Development”) for a portion of the Property as depicted in Exhibit XX (“Development Area”). The level and percentage of types of uses in the Development Area will be dependent upon traffic and other studies that are submitted by Petitioners and that are acceptable to the County. Petitioners wish to develop up to 3,000 units in the Development Area and will undertake a preliminary traffic analysis and other appropriate studies to assess the feasibility of this level of development. The County makes no commitment to any number of units pursuant to this MOU. In addition, the Parties acknowledge that neither this MOU nor the Settlement Agreement commits nor will commit the County to approve the Development. The County shall expedite processing of the Development to the extent allowed by state law and Riverside County ordinances, rules and regulations.
- 2.3 Conditional Use Permit. The County recognizes Conditional Use Permit No. 3172 as valid, provided uses undertaken on the underlying property are consistent with permit conditions. In the event Conditional Use Permit No. 3172 is found to be invalid by any court, the County shall expedite processing of a subsequent land use entitlement submitted by Petitioners to allow use of the property as a recreational vehicle park and other uses to the extent allowed by state law and Riverside County ordinances, rules and regulations to continue. The Parties acknowledge that neither this MOU nor the Settlement Agreement commits nor will commit the County to approving the subsequent land use entitlement.
- 2.4 Conservation Land. If the Parties agree on the level of the Development and if the Development is approved and permitted by the County and all other applicable agencies with permitting authority, including the U.S. Fish & Wildlife Agency, the Department of Fish & Game, and the Army Corp of Engineers, Petitioners shall dedicate to the County, or any other entity or agency as deemed appropriate by the County, up to 5,000 acres of the Property as mitigation for impacts to Covered Species from Development of the Property as depicted on Exhibit D (“Conservation Land”). Petitioners shall dedicate in fee title and/or through conservation easements the Conservation Land prior to issuance of the first grading permit for the Development. The parties may agree that the Conservation Land dedication may be phased in conjunction with specific plan phases.
- 2.5 Development Agreement. The parties agree that the County shall consider approval of a development agreement consistent with the terms of this MOU and pursuant to County policy.

- 2.6 MSHCP Non-Opposition. From and after the day of execution of this MOU, Petitioners agree not to fund, support or encourage: (1) any other MSHCP petitioners; (2) any other actions challenging the MSHCP approval or permits; and/or (3) any other action to prevent the MSHCP permits from being issued or the implementation of the MSHCP.
- 2.7 Dismissal. Petitioners shall dismiss the Petition with prejudice within ten (10) days of all of the following County approval of the General Plan Amendment, specific plan approval and expiration of applicable statute of limitations under CEQA and the Government Code for challenging the permits and approvals for the Development.
3. Stay. Within five (5) days of full and final execution of this MOU, Petitioners and Respondents will file a stipulated stay of proceedings in Vail Lake v. County of Riverside, Riverside County Superior Court Case Number 396483. The stay shall continue for a minimum of six (6) months while the Parties continue formal settlement discussions.
4. Indemnification. Petitioners agree to indemnify and defend County in any action instituted by any third party challenging the validity of any provisions of this Agreement or any action taken by the County related to the Amendment and/or the Development. This section shall not be applicable to any litigation in which the County is adverse to Petitioners.
5. Limits. This MOU shall not be construed as creating any right or benefit, substantive or procedural, enforceable at law or in equity, by a party against the County of Riverside or any of its governmental agencies, departments, political subdivisions or any other County-controlled public entities. Prior to approval of the Amendment, any party can terminate the provisions of this MOU with thirty (30) days written notice. In that event, the obligations of all parties under the MOU including without limitation Petitioners' obligations under Paragraph 2.6 would cease. This MOU shall expire if the Settlement Agreement has not been executed within twelve months of MOU execution, unless mutually agreed to by the Parties.
6. No Third Party Beneficiaries. This MOU does not provide and shall not be construed to provide third parties (i.e., non-parties to the MOU) with any right, remedy, claim, cause of action or privilege.
7. Entire Agreement. This MOU represents the entire agreement of the Parties hereto as for the matters contained herein and supersedes any and all other agreements whether oral or written between the Parties.

8. Authorized Signatory. Each Party represents and warrants to each other Party that its signatory to this Agreement has the authority to bind the Party, and this Agreement does in fact bind the Party.

**IN WITNESS WHEREOF**, the Parties who have caused this MOU to be executed as of the date first written above.

COUNTY OF RIVERSIDE  
COUNTY BOARD OF SUPERVISORS  
GARY ORSO, COUNTY ASSESSOR

VAIL LAKE USA, LLC  
VAIL LAKE VILLAGE & RESORT, LLC  
VAIL LAKE-RANCHO CALIFORNIA, LLC

By: \_\_\_\_\_  
Chair  
Riverside County Board of Supervisors

By: : \_\_\_\_\_  
William P. Johnson  
Manager

Date:

Date:

ATTEST:  
Clerk of the Board

By: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:

County Counsel

By: Karin Watts Bazán

Collins Law Firm

By: \_\_\_\_\_  
Craig M. Collins  
Attorney for Vail Lake, et al.